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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,664	03/12/2001	Jill E. Barad	MAT 3C7B	2442

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EXAMINER

CEGIELNIK, URSZULA M

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 08/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,664

Applicant(s)

BARAD ET AL.

Examiner

Urszula M Cegielnik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleet in view of Zerbo, Jr.

Fleet discloses a personalized toy housed within a packaging with customer-defined identifying material supported in the package. Fleet specifically discloses a personalized toy (Figure 1) within a package (Figure 3) having an aperture (viewing hole 41), and customer-defined identifying material (col. 2, lines 53-62) supported in the package so that the identifying material is visible through the aperture of the package as recited in claim 1; the identifying material is printed on a document separate from the package (col. 2, lines 49-53) as claimed in claim 2; the identifying material includes a customer-defined toy name as claimed in claim 5; the identifying material includes a customer-defined intended recipient as recited in claim 6; the customer-defined identifying material includes a customer-defined toy name as recited in claim 12; the customer-defined identifying material includes a customer-defined intended recipient as required by claim 13; the identifying material includes a story related to the personalized toy as recited in claim 14; the identifying material is removable as recited in claim 16;

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Fleet does not disclose the document is attached to the package by tabs that hold an edge of the document. the package having a flap covering the personalized toy and customer-defined identifying material removably attached to the flap wherein at least a portion of the identifying material being visible from the exterior of the package as required by claim 4; the flap including an aperture adapted to expose the personalized toy when the identifying material is removed as claimed in claim 7; the flap being adapted to be opened to reveal the personalized toy as recited in claim 8; a flap having an inside and an outside, where the inside of the flap faces the personalized toy; an aperture in the flap; and customer-defined identifying material supported on the inside of the flap as recited in claim 10; the customer-defined identifying material having a front side and a back side, wherein the front side of the material is visible through the aperture on the outside of the flap and the back side is visible on the inside of the flap as required by claim 11; the inside of the flap including tabs configured to support the identifying material on the inside of the flap as claimed in claim 15; and the personalized toy is visible through the aperture when the identifying material is removed as required by claim 17.

Zerbo, Jr. teaches a package for a displayable object having an aperture (window opening 12), and customer-defined identifying material supported in the package (instruction sheet 18) so that the identifying material is visible through the aperture of the package; the identifying material is printed on a document separate from the package; the document is attached to the package by tabs (pocket 15) that hold an edge of the document. the package has a flap (cover 11) covering the displayable

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object and customer-defined identifying material removably attached to the flap wherein at least a portion of the identifying material is visible from the exterior of the package as required by claim 4; the flap (cover 11) includes an aperture (window opening 12) adapted to expose the object when the identifying material is removed as claimed in claim 7; the flap is adapted to be opened to reveal the object to be displayed as recited in claim 8; a flap having an inside and an outside, where the inside of the flap faces the personalized toy; an aperture in the flap; and customer-defined identifying material supported on the inside of the flap as recited in claim 10; the customer-defined identifying material has a front side and a back side, wherein the front side of the material is visible through the aperture on the outside of the flap and the back side is visible on the inside of the flap as required by claim 11; the inside of the flap includes tabs (pocket 15) configured to support the identifying material on the inside of the flap as claimed in claim 15; and the displayable object is visible through the aperture when the identifying material is removed as required by claim 17.

It would have been object to one of ordinary skill in the art in view of Zerbo, Jr. to provide the packaging of Fleet with the packaging arrangement of Zerbo, Jr. for the purpose of making the personalized toy more appealing to children.

Response to Arguments

Applicant's arguments filed 30 July 2002 have been fully considered but they are not persuasive.

In response to Applicant's argument that Fleet fails to disclose a personalized toy, the examiner submits that Fleet indeed does show a personalized toy. Specifically,

the toy is personalized in that the toy, in the form of a fish, is given a name (col. 2, line 55). Secondly, the toy is further personalized through the inclusion of a story booklet which contains published submissions by children. These published submissions are basically the personal views of the children on how or why the figurine ended up inside the toy fish. Furthermore, the toy is considered to be customer-defined through the publication of submission of stories by previous customers.

In response to Applicant's argument that Zerbo, Jr. does not disclose a customer-defined identifying material, the examiner submits that the instruction sheet of Zerbo, Jr. is in fact a customer-defined identifying material in that

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Applicant argues that Zerbo, Jr. fails to teach customer-defined identifying material. The examiner submits that Zerbo, Jr. is used as a secondary reference to show a document and packaging arrangement as recited in the claims. Zerbo, Jr. is not intended to show the customer-identifying material as Fleet already teaches that limitation.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 6:45AM - 3:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3712


DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700